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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/670,445 | 09/25/2003 | Rainer Hartwig | ECC-5764 | 3423 |
| 30452 7590 09/06/2007 EDWARDS LIFESCIENCES CORPORATION LEGAL DEPARTMENT ONE EDWARDS WAY IRVINE, CA 92614 | | | EXAMINER MARSH, STEVEN M | |
| | | | ART UNIT 3632 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/670,445

Applicant(s)

HARTWIG ET AL.

Examiner

Steven M. Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the third office action for U.S. Application 10/670,445 for a Container Support Device filed on September 25, 2003. Claims 1-29 are pending. Claim 16 is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-20 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant claims that the support body is secured to and configured to rotate about the vertical axis of the attachment member. A body cannot be secured to an axis and it doesn't even appear that the support body is secured with any part of the attachment member. Further, if the limitation is directed to a non-elected species, the claim would be withdrawn. The limitation is not being searched on its merits.

It is also unclear what a "concave, spindle shape" is, as claimed by Applicant in claim 29. Concave is defined as a bowl shape or the inner surface of a sphere, while spindle is defined as a rod that is tapered at one end. Applicant does not disclose a container support with either of these features, nor is the "concave, spindle shape"

mentioned in the specification. It is unclear what a concave, spindle shape is and because that is the only limitation in the claim, the claim 29 is not being searched on its merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 and 17-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,750,994 to Bieschke. Bieschke discloses a support device that could support a fluid container, with an attachment member (42, 43) with an attachment member base (43) that can couple a container support device to a weight scale. There is a joint body (30, 45) with first (30) and second (45) joint members attached to the attachment member and configured to rotate about a vertical axis thereof. There is also a container support body (23) secured to the joint body and at least one container support (21) extending from the support body and coupled to the body in rotatable relation. The container support is oriented to stably support a fluid container (a tube could be secured to the support with an elastic fastener, such as a rubber band) and the container support is oriented at a non-perpendicular angle with respect to the vertical axis (it is parallel to it). The support also has a flared free end (tab 25) that could support a container.

There is a rotation mount (34,35,42) positioned on the attachment member base and configured to have the joint body rotatably coupled thereto. The second joint member is movably coupled to the first joint member in movable relation and the first joint member has a first joint body base (32) with a rotation body (54,58) located thereon. There is a universal joint assembly with multiple (54, 58) block and pin universal joints and there are at least two container supports equidistant from the vertical axis of the support body (the end caps on the end of 16, not numbered in the '994 patent, but described in U.S. Patent 3,191,663 to Bieschke, which would be the 2nd and 3rd container supports... 21 being the first). The support device is configured to be coupled to a system for providing blood filtration therapies. The second joint member is configured to move along a first arc A1 and the support body is movably coupled to the second joint member and configured to move along a second arc A2, the arc A1 being perpendicular to A2.

Response to Arguments

Applicant's arguments filed June 22, 2007 have been fully considered but they are not persuasive. In response to applicant's argument that there is no teaching that the ends of the caps on the end of 16 are configured for supporting containers, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicant argues that there is no

indication that the caps at the end of 116 would support any type of container without that container falling off. However, the container could be a tube secured to the support by a flexible cord of some type. The claim requires that the container support need only be oriented for performing that function.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this

Art Unit: 3632

application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

/SMM/

Steven Marsh

August 28, 2007



Anita King

Primary Examiner

TC 3600